IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. , Original

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Complainant,

v.

STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF TEXAS; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST,
Defendants.

OBJECTIONS OF THE STATE OF LOUISIANA TO THE MOTION OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR LEAVE TO FILE COMPLAINT, AND STATEMENT IN SUPPORT OF SUCH OPPOSITION.

FRED S. LEBLANC,
Attorney General,
State of Louisiana;

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana;

BAILEY WALSH,
Special Assistant Attorney General,
State of Louisiana.

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OBJECTIONS OF THE STATE OF LOUISIANA TO THE MOTION OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR LEAVE TO FILE COMPLAINT. AND STATEMENT IN SUPPORT OF SUCH OPPOSITION.

Now comes the State of Louisiana, through its Attorney General, appearing herein for the sole and only purpose of asking leave of this Court to file its objections to the motion of the State of Rhode Island and Providence Plantations for leave to file complaint against the above named defendants, and submits the following reasons and statement in support of such opposition:

I.

The State of Rhode Island and Providence Plantations (hereinafter called Rhode Island) has no legal standing

under its complaint to sue, either as sovereign or as parens patriae for its citizens, with respect to an appropriation or grant of property by Congress.

II.

Rhode Island is not the real party in interest. She may not sue a sovereign state, Louisiana, on behalf of certain of her citizens, in violation of the Eleventh Amendment.

III.

Rhode Island's complaint fails to present a case or controversy in any respect under Article III of the Constitution.

IV.

Rhode Island's complaint should be dismissed for want of equity.

WHEREFORE, the State of Louisiana prays that its objections and opposition to the filing of complaint by the State of Rhode Island be sustained; that the motion of the State of Rhode Island for leave to file said complaint be denied; and for all appropriate orders thereunto pertaining.

FRED S. LEBLANC,
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STATEMENT IN SUPPORT OF OBJECTIONS

I.

RHODE ISLAND HAS NO LEGAL STANDING UNDER ITS COMPLAINT TO SUE, EITHER AS SOVEREIGN OR AS PARENS PATRIAE FOR ITS CITIZENS, WITH RESPECT TO AN APPROPRIATION OR GRANT OF PROPERTY BY CONGRESS.

(A) The Submerged Lands Act Is, in Effect, an Appropriation Act and a Grant of Property by the United States.

It seems perfectly clear that Public Law 31 (The Submerged Lands Act), is only an appropriation act, in effect, and a grant of property by the United States.

Section 3, the key section, does two basic things: it (1) quitclaims, in effect, certain lands beneath navigable waters to the States, and (2) appropriates to the lessor-states all moneys subject to the control of the United States in escrow, which were paid under State leases. Therefore, the Act merely quitclaims any interest the United States may have in the property, and appropriates certain moneys held by the United States in escrow.

(B) Rhode Island Has No Legal Standing to Attack an Appropriation Act and a Grant of Property by the United States.

1. RHODE ISLAND HAS NO LEGAL STANDING TO ATTACK AN APPROPRIATION ACT.

Rhode Island has failed to cite a single authority, in its brief, indicating that she may attack either an appropriation act or a grant of property by the United States, as a sovereign or as parens patriae for her citizens.

On the contrary, her claim that in either capacity she may assail an appropriation act and grant of property by the United States is in direct conflict with the potent case of *Massachusetts v. Mellon*, (1923), 262 U. S. 447. That was also an original suit in this Court. Massachusetts sought to attack the constitutionality of the Maternity Act of 1921, which provided "for an initial appropriation and thereafter annual appropriations" (262 U. S. 478). Massachu-

setts claimed that these appropriations cast an unfair burden upon her as an industrial state and would cause her "to lose the share which it would otherwise be entitled to receive of the moneys appropriated", and that the Act was unconstitutional as a violation of the Tenth Amendment.

This Court dismissed the case for *want of jurisdiction*. It held that:

> "... the State of Massachusetts presents no justiciable controversy, either in its own behalf or as the representative of its citizens." (262 U. S. 480).

This Court went on further to point out that, at best, only political, not judicial, questions were involved, and that *no personal or property right* of Massachusetts had been injured. The Court, among other things, said:

> "First. The state of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power, viz. the power of local self-government, reserved to the states.
>
> Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation *but simply extends an option which the state is free to accept or reject*. But we do not rest here. Under article 3, section 2, of the Constitution, the judicial power of this court extends 'to controversies ... between a state and citizens of another state' and the court has original jurisdiction 'in all cases ... in which a state shall be a party'. The effect of this is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant." (262 U. S. 480). (Emphasis supplied).
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> "What, then, is the nature of the right of the state here asserted, and how is it affected by this Statute? Reduced to its simplest terms, it is alleged that the

statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the states. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the states to yield a portion of their sovereign rights; *that the burden of the appropriations falls unequally upon the several states;* and that there is imposed upon the states an illegal and unconstitutional option either to yield to the federal government a part of their reserved rights or lose their share of the moneys appropriated. *But what burden is imposed upon the states, unequally or otherwise? Certainly there is none,* unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the states where they reside." (262 U. S. 482). (Emphasis supplied).

* * * * *

"It follows that, in so far as the case depends upon the assertion of a right on the part of the state to sue in its own behalf, we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government." (262 U. S. 484, 485).

In that case this Court also relied on *Georgia* v. *Stanton* (1868), 6 Wall. 50, in which Georgia sought to enjoin the Secretary of War from carrying into execution certain acts of Congress which, it was claimed, would annul and abolish the existing State governments. That case was also dismissed for *want of jurisdiction* on the ground that the bill presented "no case of private rights or personal property infringed." (6 Wall. 77).

Also, this Court utterly demolished Massachusetts' argument that she could sue in *parens patriae* or "as the representative of its citizens", saying:

> "But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as parens patriae, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof . . . it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field, it is the United States, not the state, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." (262 U. S. 485).

Rhode Island does not claim any specific interest in either the funds in escrow appropriated or the property granted to the States, and indeed she has none. The only possible impact that this appropriation and grant can have upon Rhode Island would be to increase the incidence of federal taxation on her citizens. As pointed out in *Massachusetts* v. *Mellon, supra,* no State has legal standing to complain of the exercise of the taxing power by the United States.

Massachusetts v. *Mellon* has been repeatedly cited for the proposition that no legal rights of a State are affected by an appropriation act of the United States. See *Perkins* v. *Lukens Steel Co.* (1940), 310 U. S. 113, 125; and Mr. Justice Brandeis concurring in *Ashwander* v. *Tennessee* (1935), 297 U. S. 288, 348.

In *Massachusetts* v. *Mellon*, the statute under consideration was held to have "simply extended an option which the state was free to accept or reject" (262 U. S. 480). So here the Submerged Lands Act has simply extended an option to Rhode Island which she is free to accept or reject. She is thus in a position strikingly similar to that of Massachusetts in *Massachusetts* v. *Mellon, supra.*

We submit that *Massachusetts* v. *Mellon* is an insuperable obstacle to the jurisdiction of this Court in this case, which Rhode Island simply cannot overcome, or pretend does not exist.

2. Rhode Island Has No Legal Standing To Attack A Congressional Grant Of Property Of The United States.

Rhode Island has failed to cite any authority to show that a State or a State acting for its people may judicially attack a congressional grant of property by the United States. She is wholly precluded from making any such attack by Article IV, Section 3, clause 2, of the Constitution, which provides:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;"

On pages three and four of Rhode Island's brief, considerable emphasis is placed on the concluding clause of Article IV, Section 3, of the Constitution, which reads:

> " . . . and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular state."

We do not construe this clause as limiting the authority of Congress to dispose of the territory or other property of the United States. The rather obvious meaning to be attached to this clause, so far as a state is concerned, is that Congress may not prejudice the proprietary claims or rights of a state within its sphere of sovereignty. No state can be prejudiced by the grant of United States property by Congress.

Rhode Island contends in its brief that the "paramount rights" of the Federal Government do not constitute "property" within the meaning of Article IV, Section 3, clause 2 of the Constitution (Br. p. 20, et seq.). But when this court referred to the area in controversy in *United States v. California*, 332 U. S. 19, it was said:

> "But beyond all this we cannot and do not assume that Congress, which has constitutional control over

> *Government property*, will exercise its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission." (Emphasis supplied).

No one, sovereign or individual, has ever, with success, judicially attacked a grant of government property by the United States. This delegation of power, in trust to Congress, is exclusive and absolute, and "no state can interfere with this right, or embarrass its exercise." *Van Brocklin* v. *Tennessee* (1886), 117 U. S. 151, 168. This sweeping congressional power is "without limitations" and, the Court added:

> ". . . 'it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain in a manner consistent with its views for public policy." *United States* v. *San Francisco* (1940) 310 U. S. 16, 29, 30. *Light* v. *United States* (1911) 220 U. S. 523, 537; *United States* v. *Gratiot*, 14 Pet. 526, 527.

Indeed, in *United States* v. *California* (1947), 332 U. S. 19, this Court said, with respect to that character of the very property now in question:

> "For Article IV, Section 3, Cl. 2 of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' We have said that *the constitutional power of Congress in this respect is without limitation. United States* v. *City and County of San Francisco*, 310 U. S. 16, 29, 30, 60 S. Ct. 749, 756, 757, 84 L. Ed. 1050. Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power." (332 U. S. 27).

Disposition of Government property by *grant* has always been held to be an appropriate method of con-

gressional disposition, and has never been successfully assailed by a third party. See *Emblin* v. *Lincoln Land Company* (1902), 184 U. S. 660; *Gibson* v. *Chouteau* (1872), 13 Wall. 99; *Irvine* v. *Marshall* (1858), 20 How. 558; *Leases of Mineral Lands on Isle Royale* (1846), 4 Op. Atty. Gen. 487. Rhode Island may no more assail this grant of Government property than it may attack a patent issued under the Swamp Land Acts (43 U.S.C. 982), or the many other Congressional acts providing for the issuance of grants to States and individuals.

In addition, a grant by Congress of property previously adjudicated by this Court to be vested in the United States, has been recognized by this Court as a complete bar to further litigation. In *United States* v. *Wyoming* (1948), 335 U. S. 895, title to certain real estate had been adjudicated to be vested to the United States. Congress then passed an Act directing the issuance of a patent to the State of Wyoming for the real estate involved, and the patent was issued. In recognizing the Act of Congress and finally terminating the litigation, this Court stated that *"there is no need or requirement for further consideration by this court"*, (emphasis supplied), saying:

> "The claim for damages arose entirely from the possession by the defendant Ohio Oil Company of the land described in said Act of Congress, and its extraction of oil therefrom. Inasmuch as the patent issued by the United States vests title to said land in the State of Wyoming during the entire period of possession by the defendant Ohio Oil Company, there is no need or requirement for further consideration by the Court of plaintiff's demand for a money judgment."

United States v. *Wyoming*, *supra*, is a precedent squarely in point and a complete bar to any further litigation over the property involved in Rhode Island's complaint. Since such an Act of Congress binds the United States, *a fortiori*, it also binds Rhode Island.

The cases cited by Rhode Island, *Georgia* v. *Pennsylvania RR* (1945), 324 U. S. 439, and *Missouri* v. *Holland* (1920), 252 U. S. 416, simply do not lend any standing to Rhode Island to attack an appropriation act or grant of Government property by the United States.

As we have shown above, the power of Congress to dispose of Government property is absolute and exclusive. Congress may sell it or give it away, as it deems best. An outright grant of Government property is a thoroughly accepted mode of disposition.

Therefore, we need not argue that Congress was wise in quitclaiming or granting the property. Congress specifically stated in Section 3 of the Submerged Lands Act that ownership of the lands by the states is "in the public interest". It is not for this Court to say otherwise or to supervise the wisdom of Congressional enactments.

(C) Rhode Island Has No Legal Standing in This Court to Seek the Vindication of a General Public Interest.

Both as sovereign and as *parens patriae* for its citizens, Rhode Island seeks in its complaint to vindicate an interest which complainant itself describes as belonging to all the people.

We have heretofore cited *Massachusetts* v. *Mellon* as authority for the proposition that a state may not attack an appropriation act of Congress. In that case this Court pointed out the futility of a state seeking judicial redress for an injury suffered in common by people generally and in which the complainant has only some indefinite interest in the relief sought.

Here, Rhode Island seeks to vindicate a general public interest by asking this Court to construe an act of Congress. The juridicial impossibility of such action was clearly stated in *Perkins* v. *Lukens Steel Company, supra.*

(D) Rhode Island Has No "Equal Footing" Rights in Regard to an Appropriation or Grant of Property of the United States.

The State of Rhode Island seeks to invoke the jurisdiction of this Court in part on the basis that its sovereign rights are being infringed or placed in jeopardy under the "equal footing" clause of the Constitution of the United States. Complainant's position is largely predicated on the alleged circumstance that defendant States have been given certain economic advantages under the Submerged Lands Act (Public Law 31, 83rd. Congress, 1st Sess.; c. 65), and that the State of Rhode Island and its citizens are thereby deprived of their asserted share of certain bounties.

The "equal footing" clause applies only to political rights and obligations, not to economic interests. *Stearns* v. *State of Minnesota* (1900), 179 U. S. 223, 245. Citing with approval the case last mentioned, this Court made the following pronouncement in *United States* v. *State of Texas* (1950), 339 U. S. 707, 716, to-wit:

> "The 'equal footing' clause has long been held to refer to political rights and to sovereignty . . . It does not, of course, include economic stature or standing . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several states. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty."

The Submerged Lands Act does not create obligations of one state to another, but in addition to the appropriation therein made, constitutes a grant of property by the United States to the several states.

The following statement was made in *Stearns* v. *State of Minnesota* (179 U. S. 223, 245), to-wit:

> "It has often been said that a state admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement

or compact limiting or qualifying political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a state to deal with the nation or with any other state in reference to such property. The case before us is one involving simply an agreement as to property between a state and the nation". (Emphasis supplied).

Even if it were possible to apply economic factors to the "equal footing" clause, Rhode Island could not complain that the Submerged Lands Act, expressly or impliedly, confers any greater benefits on one State than another. When the Submerged Lands Act was adopted, the fact that the State of Louisiana had known oil and gas resources within its maritime belt while no such discoveries had been made in Rhode Island's submerged coastal lands, brought about no resulting status of disparity between the two States named. The Act not only had the effect of relinquishing all proprietary rights of the United States to the several States, covering lands and the *then known* resources thereof within the "boundaries" of such States, but it also gave to each State the right of future exploration and development within such areas.

II.

RHODE ISLAND IS NOT THE REAL PARTY IN INTEREST. SHE MAY NOT SUE A SOVEREIGN STATE, LOUISIANA, ON BEHALF OF CERTAIN OF HER CITIZENS, IN VIOLATION OF THE ELEVENTH AMENDMENT.

It is a fundamental rule in original jurisdiction cases that a motion for leave to file a complaint must be denied where the State brings suit on behalf of certain of her citizens and is not the real party in interest. This rule stems from the Eleventh Amendment which prohibits suit by citizens of one State against another State. Thus, a citizen of one State may not sue another State through the camouflage of persuading the State of his residence to sue

on his behalf in the original jurisdiction of this Court. *Louisiana* v. *Texas* (1899), 176 U. S. 1; *New Hampshire* v. *Louisiana* (1883), 108 U. S. 96.

Nor can a State escape the ironbound prohibition of the rule by "asserting an economic interest." The motion for leave to file must be denied. *Oklahoma* v. *Cook* (1938), 304 U. S. 389, 394; *Oklahoma* v. *Atchison, Topeka and Santa Fe Railway Co.* (1911), 220 U. S. 277. Thus in the *Cook* case, Mr. Chief Justice Hughes, speaking for a unanimous Court, said:

> "In *Oklahoma* v. *Atchison, Topeka & Santa Fe Railway Co.*, 220 U. S. 277, 31 S. Ct. 434, 55 L. Ed. 465, the State sought to maintain an action in this Court against the carrier to restrain it from charging unreasonable rates within Oklahoma. Setting forth the congressional grant under which the railway in question was operated and insisting that the Company was not entitled to charge the inhabitants of Oklahoma a greater freight rate for the transportation of certain commodities than that authorized for similar service in Kansas, the State alleged its interest in the development of its communities and in the success of its industries, and the menace to the future of the State through what was deemed to be a violation of the conditions of the grant. *But the Court pointed out that the State was not seeking to protect a direct interest of its own in the transportation of the commodities in question, but was endeavoring to compel the railway company to respect the rights of the shippers of these commodities.* Id., pages 286, 287, 31 S. Ct. 434. The bill was dismissed. The Court summarized its conclusion in these words: 'We are of opinion that the words in the Constitution conferring original jurisdiction on this Court in a suit "in which a party shall be a party" are not to be interpreted as a conferring such jurisdiction in every cause in which the state elects to make itself strictly a party plaintiff of record, *and seeks not to protect its own property, but only to vindicate the wrongs of some of its people . . . . .*'". (304 U. S. 394, 395). (Emphasis supplied).

Both the *Cook* and *Santa Fe* cases were cited with approval in *Georgia* v. *Pennsylvania RR* (324 U. S. 446, 451).

Since the only injury complained of with respect to fishing is to citizens of Rhode Island, not to the State itself, the State is not the real party in interest and the motion for leave to file the complaint should be denied. The Eleventh Amendment rigidly prohibits suit by them against Louisiana, directly or indirectly.

Rhode Island does not allege that the Submerged Lands Act places Louisiana in position to enact laws or adopt regulations that discriminate against the citizens of Rhode Island in shrimping and commercial fishing operations in the waters off the coast of Louisiana but that in some manner Louisiana's assertion of dominion in such area will enable Canada and Newfoundland to be released from certain treaty obligations.

Rhode Island's complaint presents a domestic issue of whether or not the Submerged Lands Act is a constitutional vehicle for the disposal of Government property within state boundaries. That Act has nothing whatever to do with treaties between the United States and foreign powers respecting the width of maritime belts within which commercial fishing may be conducted off the coasts of the sovereign parties to such treaties.

By much the same token that Rhode Island cannot seek to vindicate a general interest, *in which the United States is parens patriae for all of its people*, she cannot act for the United States in an effort to protect its treaty obligations with other nations by undertaking to sue her sister states. If certain of the defendant states are taking action, or contemplating action, to interfere with or disrupt treaties, only the Federal Government may intervene to cause that action to cease.

III.

RHODE ISLAND'S COMPLAINT FAILS TO PRESENT A CASE OR CONTROVERSY IN ANY RESPECT UNDER ARTICLE III OF THE CONSTITUTION.

Rhode Island's complaint fails to set forth a "case or controversy" under Article III of the Constitution, for the following reasons:

(A). Rhode Island has suffered no infringement of any personal or property right by virtue of the appropriation and grant of property in the Submerged Lands Act, and hence has no legal standing to sue with respect to it, as pointed out in I (C) above. *Massachusetts* v. *Mellon* alone is a complete bar.

(B). There is no case or controversy with respect to the unsupported statement made in Rhode Island's brief (P. 18) that Louisiana proposes to rely on Public Law 31 to *extend* her boundary into the Gulf of Mexico. The Submerged Lands Act gives any state the right to extend her boundary three geographical miles seaward from coast in case it did not have a pre-existing boundary that far seaward; however, the Act does not authorize any state to extend its seaward boundaries beyond the distance aforesaid. Before the Court is the question of the validity of the Submerged Lands Act, not what any state or states might undertake to do in disregard of such enactment.

(C). The seaward boundaries of Louisiana were neither created nor altered under the provisions of the Submerged Lands Act.

Title I, Section 2 (b) of the Submerged Lands Act reads as follows, to-wit:

> "The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes *as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof* but in no

event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."

Title II, Section 4 of the same Act provides that:

"The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

Thus, it is seen that in adopting the Submerged Lands Act Congress only dealt with the seward boundaries of the several States in two main respects: First, it recognized such boundaries as they existed when each respective State was admitted to the Union, and second, it gave consent to those States admitted to statehood after the formation of the Union that had not already done so to extend their seaward boundaries to a line three geographical miles distant from its coast line.

IV.

RHODE ISLAND'S COMPLAINT IS INSUFFICIENT FOR WANT OF EQUITY.

Rhode Island's complaint does not set forth any ground of equitable jurisdiction, and so is wholly insufficient, for the following reasons:

(A) Rhode Island Does Not Allege the Absence of an Adequate Remedy at Law.

The absence of such an allegation, alone, is fatal to Rhode Island's claim to equitable relief. Thus, in *Henrietta Mills* v. *Rutherford County, N. C.* (1930), 281 U. S. 121, a bill seeking to enjoin the collection of taxes was dismissed for want of jurisdiction on the ground that there was an adequate remedy at law. Speaking for a unanimous court, Mr. Chief Justice Hughes delineated the basic requirement that equitable jurisdiction depends upon the lack of an adequate remedy at law, as follows:

> "Section 16 of the Judiciary Act of 1789 (1 Stat. 82) provided 'That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.'"

See also, *Terrace* v. *Thompson* (1923), 263 U. S. 197, 214, where the Court, among other things, said:

> "That a suit in equity does not lie where there is a plain adequate and complete remedy at law is so well understood, as not to require the citation of authorities.

(B) Rhode Island Is Suffering No "Irreparable Injury" With Respect to the Appropriation and Grant of Property.

Rhode Island has no legal standing to sue and no right to any "equal footing" with respect to the appropriation of the funds held in escrow or the grant of property made by the Submerged Lands Act. Accordingly she can suffer no "irreparable injury".

(C) There Is No Case or Controversy Over Boundaries. Much Less Any "Irreparable Injury" Concerning Them.

With respect to Louisiana's seaward boundaries, the Submerged Lands Act did not purport to alter them or create new ones (III C, *supra*). And the Louisiana Legislature, the only branch of the Louisiana State Government which could have constitutionally undertaken to extend them, has taken no action in that regard since the passage of said Act and the decree of the Court in *United States* v. *Louisiana*, 340 U. S. 899, *supra*.

Moreover, no one with any power to act for the State can "propose" or has "proposed" to extend Louisiana's seaward boundaries. In fact, a proposal to extend a boundary is meaningless. Only the Legislature can extend them, and in turn, the Legislature cannnot "propose" to extend them. It can only act or refrain from acting. Hence, Rhode Island's allegations that Louisiana proposes to extend her boundaries have no legal substance; there is no case or controversy respecting boundaries, and there is no "irreparable injury" with respect thereto.

(D) Rhode Island's Complaint Does Not Allege Facts Showing "Irreparable Injury" to Her by Virtue of Any "Assertion" of Dominion by Louisiana.

Taking, at their face value, the allegations of Rhode Island's complaint (paragraphs XVIII, XIX) that Louisiana is "asserting" dominion over some area that is not agreeable to Rhode Island, it does not follow that Rhode Island citizens, much less Rhode Island herself, is suffering "irreparable injury" by reason thereof. So far as Rhode Island herself is concerned, she is in no wise affected. She may not sue Louisiana on behalf of her fishermen, in violation of the Eleventh Amendment (Point II hereof).

Moreover, there is no allegation in Rhode Island's complaint of the lack of an adequate remedy at law; and there is a complete absence of allegations of fact showing that

Rhode Island fishermen are suffering "irreparable injury" in any respect.

The absence of any "irreparable injury" in similar situations is clearly established. In *California* v. *Latimer* (1938), 305 U. S. 255, an original suit in this Court seeking equitable relief was dismissed for want of equity on the ground that there was an adequate remedy at law. The State of California sued to enjoin the members of the Railroad Retirement Board from enforcing the Railroad Retirement Act against a state-owned railroad, the State Belt Railroad, claiming not to be subject to that Act. The bill asserted that the defendants had "threatened" to require complainant to keep records at "great expense" and to enforce "certain penalties" for non-compliance with the Act. The bill prayed for an injunction against enforcement of the Act and for a decree declaring it to be unconstitutional, if applied to the State Belt Railroad.

In dismissing the bill for want of equity on the ground that there were adequate remedies at law, Justice Brandeis, speaking for a unanimous Court, said:

> "The defendants moved to dismiss the bill, assigning therefor nine grounds. We need consider only the objection that the bill is without equity. For we are of opinion that there was adequate opportunity to test at law the applicability and constitutionality of the Acts of Congress; and that no danger is shown of irreparable injury if that course is pursued." (305 U. S. 258, 259).
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> "The only 'treats' made against the complainant in connection with these sections is a ruling by the Railroad Retirement Board that the State Belt Railroad is subject to the Railroad Retirement Acts. No specific action in relation to that railroad appears to have been taken by the Board. Regulations have been prescribed under sections 8 and 10 which are simple and of a type which can be complied with largely by transcriptions from payrolls. The bill alleges that compliance with the regulations would subject the

State 'to great expense'. No supporting detail or specification is given. *Such a general statement is not an adequate basis for relief on the ground of irreparable damages.*" (305 U. S. 259, 260). (Emphasis supplied).

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"Moreover, the Board is without power to enforce its regulations except by resort to legal proceedings, as provided in Section 10 (b) 4; and *in any suit which it may institute* to enforce the regulations *ample opportunity is afforded to defend, on the ground that State Belt Railroad is not subject to the Railroad Retirement Acts.* It is contended that the possible penalty, in case of a prosecution under Section 13, is so serious as to prevent the opportunity to defend from being an adequate remedy. Compare *Ex parte Young*, 209 U. S. 123, 165, 28 S. Ct. 441, 456, 52 L. Ed. 714, 13 L.R.A., N.S., 932, 14 Ann. Cas. 765. No prosecution has been instituted or threatened." (305 U. S. 260, 261). (Emphasis supplied).

In addition, "It is particularly desirable to decline to exercise equity jurisdiction when the result is to permit a state court to have an opportunity to determine questions of state law which may prevent the necessity of decision on a constitutional question. *City of Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168, 173." *Burford* v. *Sun Oil Co.* (1943) 319 U. S. 333, note 29. In the instant case, whether Louisiana is "asserting" any dominion anywhere is a question of state law, which depends upon the construction of Louisiana statutes, and which can only be determined by the Louisiana courts.

So here (1) there is no showing of facts constituting any "irreparable injury" to Rhode Island or to any citizen thereof, and (2) questions of State law are involved. Hence, there are clear and adequat remedies at law and the bill should be dismissed for want of equity.

CONCLUSION

The motion of the State of Rhode Island for leave to file a complaint should be denied.

Respectfully submitted,

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January 1954.

Certificate of Service.

I, John L. Madden, Assistant Attorney General of the State of Louisiana and of counsel for said State in the above and foregoing motion, being first duly sworn, certify that I have served a copy of said motion upon each of the following named persons by mailing a copy of the motion to them, postage prepaid, prior to the filing of said motion, and at the following addresses:

Hon. William E. Powers
Attorney General of
Rhode Island
State Capitol
Providence, Rhode Island

Hon. Douglas McKay
Secretary of the Interior
Department of the Interior
Washington, D. C.

Hon. John Ben Shepperd
Attorney General of Texas
State Capitol
Austin, Texas

Hon. Robert B. Anderson
Secretary of the Navy
Department of the Navy
Washington, D. C.

Hon. Edmund G. Brown
Attorney General of
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State Building
San Francisco, California

Hon. Ivy Baker Priest
Treasurer of the
United States
Department of the Treasury
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Hon. Richard W. Ervin
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State Capitol
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City of Washington, District of Columbia—ss.

Subscribed and sworn to before me this 27th day of January, 1954.

BYRD C. REID
Notary Public in and for
Said City and District